INFORMATION LETTER

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FRANK E. GORRELL, FOUNDING SECRETARY

Frank E. Gorrell, the founding Secretary of the National Canners Association, died early Tuesday morning, January 16, in Doctors Hospital, Washington, after a week's illness with pneumonia, from which he had shown signs of recovering. His passing was the peaceful end to the career of the man who more than any other individual influenced the remarkable growth and progress of the canning industry for most of the last half century.

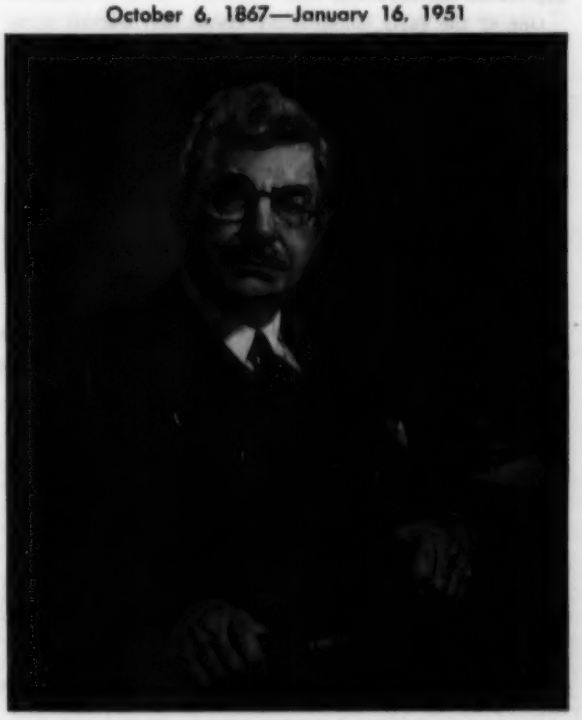
There is no one in the canning or allied industries who has not benfited from Mr. Gorrell's wise leadership. From its genesis in 1907 until the last day he spent in the office, his unstinting time and unique abilities were devoted exclusively to the affairs of the Association and, through his conduct of its activities, to the development and advancement of the canning industry and the widespread use of its products.

He was the first Secretary, when the Association was formed in Bel Air, Maryland, 45 years ago. He directed N.C.A. affairs in that position through the early and formative years, the first world war, the difficult readjustment period following that war, the prosperous times of the later nineteen twenties, the depression of the 'thirties including the days of the National Recovery Administration, and through the second world war. In 1945, at his own request, his name was not presented for reelection to that office, but he remained active as the Association's Treasurer, and was a faithful and sound adviser on all phases of the N.C.A.'s diversified programs.

Despite serious difficulties with his eyes, in recent years, entailing a series of operations and treatments, Mr. Gorrell was in his office more than he was absent. He attended most of the recent Conventions, and participated in all of the Board, Administrative Council and many of the Committee meetings held at Association headquarters. Thus, he worked with and for three generations of canners, and by them was honored at special testimonials offered on the occasion of the Association's 40th Anniversary Observance at the 1947 Convention in Atlantic City and again when his oil portrait, gift of the Association of Canners State and Regional Secretaries, was unveiled at special ceremonies held in connection with the dedication of the new N.C.A. Headquarters Building last June.

A native of Maryland, Mr. Gorrell was born near Bel Air, October 6, 1867. He taught Latin and algebra to the youth of the Bel Air Academy, a preparatory school, which he had himself attended. He read law at Bel Air and served as justice of the peace. Later he became editor and publisher of the Bel Air *Aegis*. Local politics attracted him and he had some experience on the management side of the county fair association. Regional canning associations of the day began to draw on his services, *(Please turn to page 12)*

October 6, 1867—January 16, 1951



FRANK E. GORRELL, FOUNDING SECRETARY

(Concluded from page 11)

and it was this experience that led to his selection as Secretary of N.C.A.

Its first office was the spare room of a blacksmith and carriage shop in Bel Air at $3 a month rent. The original staff consisted of one man—Secretary Gorrell, who at first served without salary and met Association bills out of his own pocket. First-year receipts of the new organization totaled $550. There were approximately 300 members that year, and they included supplymen and brokers. The total industry pack of canned fruits and vegetables was somewhere between 30 and 40 million cases.

A measure of the years of constructive leadership Mr. Gorrell gave the industry and the Association is its present occupancy in Washington of its new million dollar building with another structure underway on the Coast, its staff of about 100, and annual budget of nearly $1,000,000, a membership of about 1,000 exclusively canners, representing in volume approximately 75 percent of the approximate 500,000,000 cases packed annually, and a record of four decades of accomplishment that have given the industry and the Association top stature in terms of public service.

In the Bel Air days, Mr. Gorrell established most of the long-term policies that gave strength to the organization during its growth: The adoption of activities in favor of which there was complete unanimity of the membership; cooperation with state and regional associations and other industry groups; the promotion of the acceptance of canned foods; and the building of the public service aspects of the industry.

One of the early constructive moves Mr. Gorrell advocated was the establishment of laboratories for scientific research in canning. His views were effectuated in 1912 when official plans for such a laboratory were formulated and in 1913 when it was established in Washington and the headquarters of the Association located in the building at 1739 H Street. This was an innovation—the first time such a laboratory had been set up by a trade association to study the problems of its industry. There was expansion of this scientific basis for canning when Mr. Gorrell took the leadership in establishing branch offices in Seattle in 1919 and in San Francisco in 1926.

Mr. Gorrell gained national recognition during World War I when he devised the plan later adopted and used by the Army and Navy and by Food Administrator Herbert Hoover in the procurement of canned foods for the armed forces. This same pattern, which called for reservation of a part of the canners' pack to be set aside for government use, was followed during World War II.

It was during the period following the first world war that Mr. Gorrell began to shape the diversified activities of the Association into the professional branches of service now functioning in the service of the membership, but the genesis of many of the present Divisions may be found in several of the undertakings he had launched years earlier. The Claims and Information Divisions had their origins in the investigations of reports of food illness and their correction which began in 1909; the seed of the Division of Statistics was sown when efforts to collect industry statistics were begun; Raw Products research matters were scheduled on early convention programs and were the subject of early Association bulletins; the first consideration of organized Home Economics work probably dates back to 1910 when facts regarding the wholesomeness of canned foods were presented to the Associated Domestic Science Clubs; the Labeling Division can trace its growth to early work on definitions and standards that followed passage of the Federal Food and Drugs Act and to N.C.A. endorsement in 1912 of legislation requiring weight statements on labels. In these and other departments of Association service Mr. Gorrell guided the organization and selected the men to develop and shape up programs. But before any was adopted, he always measured it against the cardinal premises that governed all his decisions: Will this increase the consumption of canned foods; does this have the unanimity of interest of the membership; is this directly or indirectly in the public interest?

The tributes paid to F-ank Gorrell, public and private, have been manifold. They have come from friends and admirers from every walk of life, from every corner of the nation. They are too numerous for publication. They are heartfelt and though each was different, for there were many reasons back of the universal affection and admiration he inspired, two qualities of the man were most frequently mentioned—his great sagacity and warm kindliness.

At the Gorrell Testimonial Dinner in 1947 it was said: "Wisdom such as his is not common. It embodies judgment above the partisan passions of the moment. In it is engrained a polite patience against which hasty and faulty thinking, and often vigorous talk, have beaten in vain. For never has he been the first to speak and the last to recant. His unique sagacity is founded on an understanding of things both great and small, on a profound knowledge of the industry he has so long served, and on insight into those lesser and intimate matters which to the individual man are important—perhaps to him alone. To his kindliness we can all testify. No matter how intimate or casual the relation, how often wrong his visitor might be, he offers always an innate and gracious courtesy. In moments of joy he is responsive, and in time of trouble he has given each of us his quiet and complete consolation."

In keeping with Mr. Gorrell's own request, the funeral services held Thursday afternoon at the mortuary on Pennsylvania Avenue, near the site of the old building where so long he directed the destinies of the Association, were simple and modest. Canners and other industry friends and associates came from every part of the country. The Association offices were closed for the day and no flag was flown on the building. Similar observance was made in many offices throughout the land where the man and his works were so well known and so deeply respected. Mr. Gorrell was laid to rest at Fort Lincoln Cemetery, beside his wife, May Harvey Gorrell, who died in 1935.

DEFENSE

Order M-4, Ban on Construction

A ban on construction of certain commercial buildings, issued by the National Production Authority on January 15, does not affect erection or repair of cannery production or storage facilities.

The NPA modified its basic construction order, M-4, so as to prohibit certain construction not already begun on January 13.

The buildings on which construction or repair is prohibited are specified largely according to their use. The prohibited list does not include production facilities for any industry nor food warehouses, except for retail sales.

The prohibited list contains only one type of construction in which canners may be concerned. NPA approval will be required for construction or repair of office buildings if its cost exceeds $5,000.

With respect to the structures on which NPA prohibits construction or repair, NPA ordered a freeze until February 15 so as to permit the printing of applications for authorization and to train personnel in Commerce Department field offices in the processing of applications.

ODM Staff Organization

W. Howard Chase has been appointed an assistant to Charles E. Wilson, Director of Defense Mobilization. He will be a consultant on information. He has recently been director of information of the National Production Authority while on temporary loan from General Foods Corp.

Col. Alfred E. Howse, USAF-Ret., also was named to assist Mr. Wilson. He will advise on general economics. As Executive for Procurement for the Air Force in World War II, Colonel Howse supervised the development of the $50,000,000,000 procurement program.

Alan Valentine Resigns

The resignation of Alan Valentine as Economic Stabilization Administrator was accepted by President Truman January 19. Eric Johnston of the Motion Picture Producers Association was appointed to succeed Mr. Valentine.

Tin Order Still Awaiting Approval

At press time, the tinplate order which had been expected this week was the subject of additional conferences between agencies concerned with the production and distribution of food. Although it had been expected that the order would be issued by last night, its issuance is being delayed by these further conferences.

Administratively, it is expected that the tin order will be issued in five parts, constituting five separate orders, affecting:

1. Plate specifications for metal cans for food and nonfood products;
2. Plate specifications for metal closures for glass containers;
3. Restrictions on the use of tin in collapsible tubes;
4. Requirements on the use of terneplate in lieu of tinplate, and of blackplate in lieu of terneplate, for certain products; and
5. A direction to tin processors, amending the basic tin order, M-8, so as to make it conform to the conditions created by the four new orders.

Copies of the tin orders of concern to canners will be mailed to members as soon as the orders are issued.

PERSONNEL

Canners League of Florida

Appointment of Delbert E. "Bert" Livingston of Tampa as secretary-manager of the Canners League of Florida has been announced by R. C. Lewis, president of the association.

Mr. Livingston is known in state and national agricultural, advertising, and publishing circles as editor for 14 years of *Florida Grower* magazine. During that time, upon several occasions, he was chosen Florida's spokesman at national and international conferences concerning agricultural affairs.

He is a native of Florida and is well known in horticultural circles of the state.

Gibbs Co. Service Awards And Promotions

Twenty-one service pins were awarded employees at a special pre-Christmas ceremony by Gibbs & Company Inc., of Baltimore. Explaining that this is an annual custom, W. T. Dixon Gibbs, president of the company, advises that twelve 5-year, four 10-year, two 20-year, two 30-year, and one 40-year pins were presented. Charles Biggerman, foreman at the Booth plant, was the recipient of the 40-year pin.

Mr. Gibbs also announced that two executives of the company have been promoted to the status of vice president. Joseph Brenner, who has served the company for 16 years, was named vice president in charge of sales. John J. Fenton, after 14 years with the company, has been promoted to the position of vice president in charge of personnel. Other officers of the company besides these two and W. T. Dixon Gibbs are John S. Gibbs, Jr., chairman of the board; Oscar T. Sewell, vice president in charge of purchasing; and Meade Rippard, vice president and secretary.

H. G. Herrell Appointed

Henry G. Herrell, veteran career employee in the U. S. Department of Agriculture, has been appointed to the newly established position of deputy assistant chief for administrative affairs of the Bureau of Entomology and Plant Quarantine.

FOREIGN TRADE

Imports of Canned Meats

The meat inspection system recently established in Mexico has been recognized by the U. S. Department of Agriculture as the substantial equivalent of the system in operation in the United States, and Mexico has been added to the list of countries from which certain meats, including canned and cooked meats and meat food products, may be imported into the United States.

SCHEDULE OF PRINCIPAL EVENTS OF THE 1951 CONVENTION

(Details announced to date; subject to revision)

Wednesday, February 14

9:30 a.m.—Meeting of N.C.A. Scientific Research Committee, Room 10, Hotel Stevens

Thursday, February 15

2 p.m.—Meeting of N.C.A. Budget Committee, Headquarters Suite, Hotel Stevens
2 p.m.—Canning Industry Research, Inc., Room 6, Hotel Stevens

Friday, February 16

9:30 a.m.—Meeting of N.C.A. Home Economics Committee, Room 19, Hotel Stevens
9:30 a.m.—Meeting of N.C.A. Labeling Committee, Room 8, Hotel Stevens
12:30 p.m.—Luncheon meeting, N.C.A. Administrative Council, North Assembly Room, Hotel Stevens
1:30 p.m.—Meeting of N.C.A. Buildings Committee, Room 19, Hotel Stevens
1:30 p.m.—Meeting of N.C.A. Convention Committee, Room 8, Hotel Stevens
2 p.m.—N.C.A. Tomato Products Standards Meeting, Lower Tower, Hotel Stevens
2:00 p.m.—Meeting of Officers and Directors, Peanut Butter Manufacturers Association, Morrison Hotel
7:30 p.m.—Meeting of N.C.A. Raw Products Committee, Room 8, Hotel Stevens

Saturday, February 17

9 a.m.-6 p.m.—Machinery and Supplies Exhibit, Exhibit Hall and Ballroom floor, Hotel Stevens
9:30 a.m.—Morning session, N.C.A. Board of Directors, West Ballroom, Hotel Stevens
10 a.m.—General Session, Peanut Butter Manufacturers Association, Morrison Hotel
12:30 p.m.—N.C.A. Board of Directors Luncheon, South Ballroom, Hotel Stevens
1:30 p.m.—Special N.C.A. War Mobilization Session, North Ballroom, Hotel Stevens
5 p.m.—Distribution of Attendance Awards, Exhibit Hall, Hotel Stevens
6 p.m.—Dinner for State Secretaries, Room 1, Hotel Stevens
6:30 p.m.—Old Guard Reception and Dinner, North Assembly and North Ballroom, Hotel Stevens
7 p.m.—Meeting of N.C.A. Resolutions Committee, Room 21, Hotel Stevens
7 p.m.—N.C.A. Research Advisory Committee Smoker, Room 4, Hotel Stevens

Sunday, February 18

9 a.m.—Meeting of N.C.A. Nominating Committee, North Assembly Room, Hotel Stevens
9:30 a.m.—Meeting of N.C.A. Statistics Committee, Room 8, Hotel Stevens
9:30 a.m.—Meeting of N.C.A. Legislative Committee, Room 10, Hotel Stevens
10 a.m.—Meeting of Officers and Members of Executive Committee, National Preservers Association, Morrison Hotel
10 a.m.—Annual meeting, C.M.&S.A., West Ballroom, Hotel Stevens
10 a.m.-12:30 p.m.—Directors' meeting, Associated Independent Canners, Inc., Room 9, Hotel Stevens
12 m.—Luncheon meeting, N.C.A. Claims Committee, Room 6, Hotel Stevens
12 m.-6 p.m.—Machinery and Supplies Exhibit, Exhibit Hall and Ballroom floor, Hotel Stevens
1:30 p.m.—General Session of N.C.A., North Ballroom, Hotel Stevens
1:30 p.m.—Business meeting, National Food Brokers Association, Grand Ballroom, Palmer House
4 p.m.—Meeting of N.C.A. Fishery Products Committee, Room 8, Hotel Stevens
5 p.m.—Attendance Awards, Exhibit Hall, Hotel Stevens

Monday, February 19

9 a.m.—N.C.A. Raw Products Conference, North Assembly Room, Hotel Stevens
9 a.m.-6 p.m—Machinery and Supplies Exhibit, Exhibit Hall and Ballroom floor, Hotel Stevens
9:30 a.m.—N.C.A. Canning Problems Conference, Room 2, Hotel Stevens
9:30 a.m.-4:30 p.m.—General meeting, National Kraut Packers Association, Room 4, Hotel Stevens
10 a.m.—General Session, National Preservers Association, Morrison Hotel
2 p.m.—N.C.A. Raw Products Conference, North Assembly Room, Hotel Stevens
2 p.m.—N.C.A. Canning Problems Conference, Room 2, Hotel Stevens
5 p.m.—Attendance Awards, Exhibit Hall, Hotel Stevens
7 p.m.—Young Guard Dinner, Terrace Casino Room, Morrison Hotel
7 p.m.—Annual N.F.B.A. Banquet, Grand Ballroom, Palmer House
8 p.m.—N.C.A. Raw Products Smoker, North Assembly Room, Hotel Stevens

Tuesday, February 20

9 a.m.-6 p.m.—Machinery and Supplies Exhibit, Exhibit Hall and Ballroom floor, Hotel Stevens
9:30 a.m.—Joint N.C.A. Raw Products and Research Laboratories Conference, South Ballroom, Hotel Stevens
10 a.m.—Technical Meeting, National Preservers Association, Morrison Hotel
2-5 p.m.—Annual Meeting, Associated Independent Canners, Inc., Room 2, Hotel Stevens
2 p.m.—N.C.A. Fishery Products Conference, North Assembly Room, Hotel Stevens
5 p.m.—Attendance Awards, Exhibit Hall, Hotel Stevens
7 p.m.—Annual Dinner Dance, under auspices of Canning Machinery & Supplies Association, Grand Ballroom, Palmer House

Wednesday, February 21

8 a.m.-1:15 p.m.—National Cherry Pie Baking Contest, sponsored by National Red Cherry Institute, Grand Ballroom, Morrison Hotel
9 a.m.-3 p.m.—Machinery and Supplies Exhibit, Exhibit Hall and Ballroom floor, Hotel Stevens
10 a.m.—Meeting of N.C.A. Tuna Standards Industry Committee, Room 4, Hotel Stevens
2:30 p.m.—Attendance Awards, Exhibit Hall, Hotel Stevens

Thursday, February 22

9:30 a.m.-12 m.—Meetings of Standing Committees, National Pickle Packers Association, Sheraton Hotel
12:15 p.m.—Luncheon meeting of Committees, Officers and Board of Directors, National Pickle Packers Association, Suite 816, Sheraton Hotel
1:30-5 p.m.—Board of Directors meeting, National Pickle Packers Association, Suite 815, Sheraton Hotel
6 p.m.—Cocktail party and Dinner Dance, National Pickle Packers Association, Sheraton Hotel

Friday, February 23

10 a.m.-5 p.m.—General Session, National Pickle Packers Association, Sheraton Hotel

CONVENTION

Details of Raw Products Conferences at Convention

Insect control and plant improvement will be the principal topics of discussion at the Raw Products Conferences to be held at the 1951 Convention in Chicago, Monday, February 19.

The Raw Products Conferences will be held in the North Assembly Room of the Hotel Stevens, the morning session being scheduled for 9 a.m. and the afternoon session at 2 p.m. Program details of these two conferences follow:

Monday Morning, February 19

Chairman: Charles H. Mahoney, Director, Raw Products Research Bureau, National Canners Association

A Practical Field Control Program for Corn Insects: G. C. Decker, Illinois Natural History Survey, and L. P. Ditman, Maryland Experiment Station

A Question Box Panel on Insect Control: Insofar as possible, questions on insect control will be answered.

Panel Discussion: Use and Limitations of the Heat Unit Technique for Planting and Harvesting Canning Crops

Monday Afternoon, February 19

Chairman: Charles H. Mahoney, Director, Raw Products Research Bureau, National Canners Association

A Report on Recent Tomato Meetings: Charles H. Mahoney, National Canners Association

The Value of Soil Testing and Experimental Farms for Improving Yields and Quality of Canning Crops: E. W. Montell, Campbell Soup Co.

Panel Discussion: Labor Saving Equipment for the Production and Harvesting of Canning Crops—Pea, Sweet Corn, Spinach, and Root Crop Harvesters; Bean Pickers; and High Clearance Sprayers

In addition, a Raw Products Smoker will be held at 8 p.m. that night in the North Assembly Room.

FOREIGN AID

Citrus Fruit Technology

American know-how in citrus fruit processing will be made available to four Italian experts who will visit laboratories and plants in Florida, Texas, and California. The 90-day study is sponsored by the Economic Cooperation Administration. An ECA announcement stated, in part:

"Although Italy ships a large quantity of citrus juice to various European countries, citrus men believe the quality could be improved by using the more modern pasteurization methods instead of chemical preservatives.

"Marshall Plan countries offer a large potential market for orange and lemon juice, and other products. The citrus industry is especially important to Italy as citrus fruit and its industrial derivatives are produced in southern Italy and Sicily, districts which are deficient in industry and extremely low in earning power."

Quartermaster General Feldman to Address 1951 Convention

Maj. Gen. Herman Feldman, The Quartermaster General of the Army, will be one of the speakers at the Special War Mobilization Session to be held Saturday afternoon, February 17, at Hotel Stevens, during the 1951 Convention.

General Feldman rose through the ranks from enlisted status to become Quartermaster General on March 1, 1949. For three years prior to this appointment, he had served as Chief of the Supply Division, in which capacity he exercised direct control over the QMC Subsistence Branch and the QMC Purchasing Offices.

At the same time, he served as Assistant to The Quartermaster General, then Maj. Gen. T. B. Larkin, whom he succeeded.

In that period, the QMC had begun to carry on centralized procurement of all subsistence for all of the armed services. The QMC continues, today, to be buying agent for all canned foods for the Army, Navy, Air Force, and Marine Corps.

General Feldman enlisted in 1907 and was commissioned a second lieutenant in field artillery in 1917. He was graduated from the QMC Subsistence School in 1931 and entered on duty in quartermaster work.

During World War II, General Feldman served overseas at supply centers in Europe and North Africa. He returned to the United States in 1943 and was assigned to duty in the Office of the Quartermaster General. He continued to serve in that office, advancing through various assignments until becoming The Quartermaster General.

STATISTICS

RSP Cherry Stocks

A report on canners' stocks and shipments of canned RSP cherries has been compiled by the Association's Division of Statistics, and complete reports have been mailed to canners packing that product.

RSP Cherry Stocks and Shipments

	1949–50	1950–51
	(*actual cases*)	
Carryover, July 1	.....	30,332
Pack	3,445,323	5,023,951
Total supply	3,445,323	5,053,283
Stocks, Jan. 1	1,069,461	1,301,819
Shipments during Dec.	132,153	377,753
Shipments, July 1 to Jan. 1	2,375,862	3,751,464

Stocks of Bulk Sauerkraut

The Association's Division of Statistics has prepared a report showing the quantities of bulk sauerkraut of the 1950 crop (in 45-gallon barrels) in canners' hands as of December 1, 1950. Comparative figures for 1949 are not available.

Bulk Sauerkraut in Canners' Hands

(*in 45-gallon barrels*)

	Dec. 1, 1950
Northeast	282,934
Midwest	270,838
South	27,365
West	27,904
U. S. Total	609,041

Northeast comprises Conn., Del., Mass., Md., N. Y., Pa., and Va. Midwest comprises Ill., Ind., Iowa, Mich., Minn., Nebr., Ohio, and Wis. South comprises Ark., Mo., Tenn., and Tex. West comprises Calif., Colo., Mont., Ore., Utah, and Wash.

PUBLICITY

Seventeen

Teen-age entertaining with a winter supper is made fun and easy in the article "Just Cooking, Thanks" in the January *Seventeen* magazine.

How a teen-ager can make olive spaghetti bake for "the crowd" is given in the popular step-by-step picture method of magazine recipe writing. The basic ingredients of the recipe include canned tomatoes, cream style corn, and whole or pitted ripe olives. The author says, "This hearty casserole is just the thing for winter suppers. Cook it up (easy), watch it disappear (fast)."

CONGRESS

House Committee Reports New Renegotiation Bill

A brief summary of the requirements of existing law relative to the renegotiation of government contracts was contained in the INFORMATION LETTER of August 5, 1950, page 246. No changes in the existing law have been effected since that date and present contracts with the government remain subject to renegotiation in accordance with the principles there set out.

In general, renegotiation presently applies only to *negotiated* contracts for procurement entered into by the Department of Defense, including the Departments of the Army, Navy and Air Force, and all subcontracts thereunder. Renegotiation is further applicable only to contracts or subcontracts in excess of $1,000, and renegotiation proceedings may be instituted only in cases where accruals or receipts under contracts subject to renegotiation amount to more than $100,000 during the contractor's fiscal year.

On January 12 Chairman Doughton of the House Ways and Means Committee introduced H. R. 1270, the proposed "Renegotiation Act of 1951," a bill which generally follows the provisions of H. R. 9564, introduced by Representative Vinson during the last session of Congress, and which generally extends renegotiation of government contracts to a wartime basis. The House Ways and Means Committee studied H. R. 1270 in executive session this week and on January 17 requested the chairman to introduce a clean bill reflecting changes agreed upon by the Committee. The bill was introduced yesterday as H. R. 1724.

The Committee agreed to keep in the new bill the exemptions on agricultural commodities and on integrated producers of exempted products, as described below.

Under H. R. 1270, renegotiation would be extended to all contracts, whether entered into on a negotiated or competitive bid basis, and all related subcontracts thereunder, entered into with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the Department of Commerce, or any other agencies exercising functions in connection with the national defense that the President shall designate. Contracts or subcontracts for amounts less than $1,000 will be included.

The new bill, however, retains the $100,000 "floor" or minimum limitation which requires that a contractor or subcontractor do more than $100,000 in renegotiable business during his fiscal year before he may be subjected to renegotiation proceedings. Furthermore, the bill limits the amount of refund which may be claimed by the government to an amount not in excess of that which will, when refunded, reduce the aggregate of the contractor's renegotiable receipts or accruals below $100,000.

Of particular interest to canners is the inclusion in H. R. 1270 of a provision mandatorily exempting any contract or subcontract for an agricultural commodity in its raw or natural state; or if the commodity is not customarily sold or has not an established market in its raw or natural state, in the first form or state in which it is customarily sold or in which it has an established market, provided that the contract or subcontract is with the producer of the agricultural commodity (including cooperatives). This exemption is coupled with a directive to the Renegotiation Board to prescribe regulations sufficient to guarantee to each processor of agricultural commodities who also grows his own produce a cost allowance substantially equivalent to the amount which such canner-grower would have realized if he had sold his produce in its raw or natural state.

The effect of this exemption for agricultural commodities and the accompanying directive is to prevent the inclusion in profits subject to renegotiation of that portion of a canner-grower's profits attributable to the growing phase of his vertically-integrated operations. While such a cost allowance was provided for in the 1943 Renegotiation Act, no such provision was included in H. R. 9246, the original renegotiation bill.

The preliminary renegotiation procedure and the appeal procedure under the new bill follow closely the provisions of the existing Renegotiation Act, including a final redetermination of the amount of excess profits by the Tax Court of the United States. Following notification to contractors and subcontractors of their assignment for renegotiation, the Board will endeavor to reach an agreement with the canner on the amount of excessive profits. In the event that agreement cannot be reached, the Board may issue a unilateral order determining the amount of excessive profits, and the contractor or subcontractor may file a petition for redetermination with The Tax Court of the United States. Interest on the amount of excessive profits finally determined by The Tax Court is payable at the rate of 6 percent per annum from the date fixed for refund by the Board.

The new bill provides for only a mild retroactive effect. The new provisions are to apply only to amounts received or accrued on negotiable contracts or subcontracts after January 1, 1951.

Support for Nonbasic Crops

A new farm price support program for nonbasic commodities, similar to the World War II Steagall plan, was proposed January 15 by Senator Young (N.D.) to encourage expanded production of needed farm products for the mobilization program.

He introduced a bill, S. 450, to give the Secretary of Agriculture authority to support prices for such commodities at not less than 90 percent for two years after January 1, subsequent to an announcement by the President or by a concurrent resolution of Congress ending the national emergency period.

S. 450 would allow the Secretary to give 90 percent parity support to any nonbasic commodity not covered by the present program and which was needed in the mobilization program. He would have to notify producers by a public announcement.

Forthcoming Meetings

January 23-25—Indiana Canners Association, Canners and Fieldmen's Conference, Purdue University

February 1-2—Ozark Canners Association, 43rd Annual Convention, Colonial Hotel, Springfield, Mo.

February 5-6—Ohio Canners Association and Ohio State University, Canners' and Fieldmen's Conference, Deshler-Wallick Hotel, Columbus

February 12-13—Canadian Food Processors Association, Annual Convention, Ritz-Carlton Hotel, Montreal

February 17—Peanut Butter Manufacturers Institute, Annual Meeting, Morrison Hotel, Chicago

February 17-24—Annual Conventions of National Canners Association, National Food Brokers Association, and Canning Machinery & Supplies Association, Chicago, Ill.

February 19-20—National Preservers Association, 32nd Annual Meeting, Morrison Hotel, Chicago

February 22-23—National Pickle Packers Association, Winter Meeting, Sheraton Hotel, Chicago

March 5-6—Virginia Canners Association, Annual Convention, Roanoke

March 7-8—Utah Canners Association, 39th Annual Convention, Hotel Utah, Salt Lake City

March 8-9—Northwest Branch of National Canners Association, 14th Annual Canned Salmon Cutting and Salmon Research Conference, Olympic Hotel, Seattle, Wash.

March 13-14—Northwest Canners Association, Annual Meeting, Davenport Hotel, Spokane, Wash.

March 19—Tennessee-Kentucky Canners Association, Annual Meeting, Maxwell House Hotel, Nashville, Tenn.

March 19-20—Canners League of California, Annual Meeting, Hotel Biltmore, Santa Barbara

April 17-20—American Management Association, 29th National Packaging Exposition, Atlantic City, N. J.

April 19—Indiana Canners Association, Spring Meeting, Claypool Hotel, Indianapolis

June 3-4—Michigan Canners Association, Spring Meeting, Park Place Hotel, Traverse City

MEETING OF COMPETITION

Supreme Court Confirms Seller's Right to Reduce Prices In Particular Transactions in Order to Meet Competition

By a 5 to 3 decision, entered on January 8, 1951, the United States Supreme Court settled the question whether a seller, in order to meet competition, may in good faith reduce his price in selling to particular customers without violating the Robinson-Patman Act. The majority determination that a seller may do so, within the limitations set forth in the opinion, represents a legal decision of major significance to those canners who often reduce prices to meet competition in particular markets.

The case involved sales of gasoline by the Standard Oil Company of Indiana to four large Detroit jobbers at a price less than that at which it sold the same gasoline to a large number of its retail service station customers. Some of the jobbers who got the lower price in turn sold the gasoline through their own service station outlets and consequently were able to undersell other retail service stations who purchased from the Standard Company. Other jobbers receiving the lower price resold gasoline to retailers at prices less than the price at which Standard sold to retail service stations.

The Federal Trade Commission brought a proceeding against Standard charging that the price discriminations it practiced adversely affected competition among retail service stations. The Company defended on the ground that its lower price to the particular jobbers had been given in good faith in order to meet an equally low price offered to the particular jobbers by a competitor. Standard insisted that if it had not met this competition, it could not have retained the business of these customers.

The Federal Trade Commission took the position that the good faith meeting of competition was not a complete defense to a charge of price discrimination. On intermediate appeal, the Circuit Court of Appeals affirmed this Commission interpretation of the Robinson-Patman Act.

This development in the law, prior to final action by the Supreme Court, in part was the basis for the changes proposed in the Johnson bill, S. 236, in 1949 (see INFORMATION LETTER No. 1219, January 26, 1949, page 14; No. 1235, May 24, 1949, page 207; and No. 1271, February 4, 1950, page 85) and in the O'Mahoney bill, S. 1008, which Congress enacted last year and which was vetoed by President Truman (see INFORMATION LETTER No. 1228, April 2, 1949, page 153; No. 1238, June 11, 1949, page 229; No. 1240, June 25, 1949, page 239; No. 1242, July 9, 1949, page 251; No. 1258, October 29, 1949, page 324; and No. 1290, June 17, 1950, page 211). For frequently in attempting to meet competition in distant markets, canners have found it necessary to absorb freight and have done so by reducing their f.o.b. cannery prices.

The Standard Oil case was twice argued before the U. S. Supreme Court. The majority of the Court finally decided that Section 2(b) of the Robinson-Patman Act permitted a seller, in order to retain a customer, to reduce his price in particular transactions in good faith to meet "a lawful and equally low price of a competitor." The Court pointed out that the Robinson-Patman Act of 1936 had restricted the original Clayton Act of 1914. The amendments made by the Patman Act, the Court said, restricted the good faith meeting of competition, to the meeting of

"price differentials occuring in actual competition. It also excludes reductions which undercut the 'lower price' of a competitor. None of these changes [made by the Robinson-Patman Act], however, cut into the actual core of the defense. That still consists of the provision that wherever a lower price of a competitor threatens to deprive a seller of a customer, the seller, to retain that customer, may in good faith meet that lower price. Actual competition, at least in this elemental form, is thus preserved."

As the Standard case was presented to the Supreme Court, it involved only the necessity for reducing prices in particular transactions in order to *retain* an existing customer. The Court discussed the statute almost entirely in these terms. It dealt with the meeting of competition solely as involving a situation where

"a competitor's 'lower price' is a lawful individual price offered to any of the seller's customers, then the seller is protected, under Section 2(b), in making a counteroffer provided the seller proves that its counteroffer is made to meet in good faith its competitor's equally low price."

Elsewhere the Court discussed the statute in terms of Congress having provided merely a "right of self-defense against a price raid by a competitor."

This discussion of the Robinson-Patman Act by the majority of the Court—undoubtedly developed in response to the views of the dissenting Justices—has introduced new and possibly confusing elements in determining whether the day-to-day meeting of competition is in compliance with the law. The first is the reiteration of the idea that one may reduce his price in good faith to meet competition only to *retain* a customer, without recognition of the possibility that a seller may often reduce his price in a particular transaction in order to dispose of his goods to new customers to whom the same competitively lower prices are avilable. Just who will in the future be interpreted to be a "customer" whose account may be lawfully retained by meeting competition—whether a "customer" must have been previously sold some goods in the same season, or merely in earlier years, whether a previous attempt to sell the particular account will suffice, or whether a purchaser of one canned product is within this test to be regarded as a customer for another product packed by the same seller—remain open questions.

Limiting price reductions to those which only *meet*, but do not *beat*, the competitive prices is not a new interpretation, but rests upon the statutory language restricting the giving of a lower price or the furnishing of services or facilities to those "made in good faith to meet an *equally low* price of a competitor."

The third limitation upon the exercise of the right to met competition, seemingly imposed by the Supreme Court, is that the competitive price being met must in itself be "lawful." Taken on its face, this might mean that a seller must determine whether or not the competitive lower prices being offered to his customers by other sellers are in compliance with the Robinson-Patman Act. In those instances where the competition being met is in a distant market, this may be quite a difficult task. Moreover, since under the Robinson-Patman Act a difference in price becomes an illegal discrimination only when it may adversely affect competition, literal compliance might require a seller to make a legal evaluation as to the pricing conduct of his competitors, without knowledge of the full facts; or else require him to act at his peril in meeting the competition.

It may well be that this requirement—that the competitive price being met is in itself lawful—will in the future be assimilated in the general requirement that the meeting of competition be carried on in "good faith" On this point the Supreme Court, some five years ago, recognized that the statute should not place an impossible burden upon sellers, but requires them "to show the existence of facts which would lead a reasonable and prudent person to believe that the granting of a lower price would in fact meet the equally low price of a competitor." This judicial recognition that what a buyer tells a seller, or his broker, about the price in a competitive offer may not always be true, would appear to be equally applicable

to the otherwise insuperable problem of a canner determining whether the prices his competition may be offering are legal prices. Any other rule would mean that every seller who at some time finds it necessary to reduce a price to meet competition would become his brother's keeper.

Nothing in the Standard Oil decision changes the procedural requirement in the Robinson-Patman Act that the burden of proving that a lower price was given in good faith to meet the equally low price of a competitor rests upon the seller who is charged with an unlawful price discrimination. Wherever there is insufficient evidence to prove this defense, any discriminatory price which may injure competition will be deemed unlawful. It is still essential that those who make competitive price reductions maintain a sufficient record of their operations to establish both the existence of the competitive price and their good faith in meeting it.

Mr. Justice Reed, joined by Chief Justice Vinson and Mr. Justice Black, dissented on the ground that Congress had intended in the Robinson-Patman Act to restrict the right to meet competition, and that the Act was designed to leave to the Federal Trade Commission the determination in each case as to whether the benefit deriving from the meeting of competition outweighed the adverse effects which in the particular situation the price reduction might have upon competition. The minority based its opinion both upon the legislative history and the text of the statute.

Its point of view was that

"the statutory development and the information before Congress concerning the need for strengthening the competitive price provision of the Clayton Act, make clear that the evil dealt with by the proviso of § 2(b) was the easy avoidance of the prohibition against price-discrimination. The control of that evil was an important objective of the Robinson-Patman Act. . . . Because of experience under the Clayton Act, Congress refused to continue its competitive price proviso. Yet adoption of petitioner's position would permit a seller of nationally distributed goods to discriminate in favor of large chain retailers, for the seller could give to the large retailer a price lower than that charged to small retailers, and could then completely justify its discrimination by showing that the large retailer had first obtained the same low price from a local low-cost producer of competitive goods. This is the very type of competition that Congress sought to remedy. To permit this would not seem consonant with the other provisions of the Robinson-Patman Act, strengthening regulatory powers of the Commission in 'quantity' sales, special allowances and changing economic conditions."

TAXES

Summary of Corporate Excess Profits Tax Law

The new excess profits tax law which the President approved on January 3 is an extremely complicated measure. The following summary analysis of the new legislation is provided merely as a guide to its major provisions.

General

The excess profits tax is an additional tax over and above the other corporate income taxes. The first $25,000 of corporate income remains subject to the normal corporate income tax of 25 percent (23 percent for 1950). With the increase in the corporate surtax rate from 20 percent to 22 percent, corporate income in excess of $25,000 will be taxed at a combined normal surtax rate of 47 percent (not including the 2 percent penalty tax applicable to consolidated returns).

Corporate income classed as "excess profits" under the new law becomes subject to an additional tax of 30 percent. The total tax on "excess profits" income therefore is 77 percent. The law provides, however, that the combined rate of the corporate income tax, including the 2 percent tax on consolidated returns, and the excess profits tax cannot exceed a 62 percent ceiling rate applied to the corporation's net income (after certain adjustments).

Effective Dates

The surtax rate increase is to be effective with respect to taxable years beginning on or after July 1, 1950. The excess profits tax is given a retroactive effect to July 1, 1950. Corporations whose fiscal years end other than on June 30 will be required to apply against their entire 1950 income a rate determined by the relationship which the length of their fiscal year June 30, 1950, bears to their total fiscal year. Thus calendar year companies will pay an excess profits tax of approximately 15 percent on their 1950 income and fiscal-year corporations with tax years ending other than on June 30 will be subject to a tax determined by applying to the 30 percent rate a fraction computed by dividing the number of fiscal year days after June 30 by the total number of days in their fiscal years.

The law provides that the excess profits tax feature of the bill will have no application to taxable years beginning on or after July 1, 1953. No termination date has been prescribed for the increased surtax rate.

Excess Profits Tax Credit

As in the case of the World War II tax, the taxpayer is given the choice of the higher of two alternative bases in determining what proportion, if any, of its income is to be subjected to excess profits tax. The taxpayer pays an excess profits tax only on his "adjusted excess profits net income," which consists of his normal tax net income (after certain adjustments) reduced by the amount of his excess profits credit (as determined under either of the two methods) and any unused excess profits credits carried forward or backward to the taxable year.

The first of these two methods, in general, involves the determination of an average earnings credit based on the average income for three out of the four years of the base period 1946 to 1949. The alternative method involves a credit based on a rate of return on invested capital.

The bill provides for a minimum credit of $25,000. Any taxpayer may raise his credit to $25,000 if neither the average earnings nor invested capital method produces a credit equal to this amount.

Average Earnings Credit

Under the average earnings credit method, taxpayers will receive a basic credit of 85 percent of the average earnings of the best three of the four years in the base period. Any 36 consecutive months in the base period may be selected as the best years, or any 12 consecutive months in the base period may be eliminated. Certain more restrictive requirements as to the selection of the 12 months to be eliminated are, however, applied to taxpayers whose base period fiscal years ended after March 31.

In addition to eliminating the poorest year in his base period, the taxpayer may count the earnings of any remaining deficit year as zero.

The law also provides for additions to the credit to reflect one-half of the net additions to capital in 1948, and all of the net additions to capital in 1949. In determining net additions to capital, equity capital and retained earnings are counted at 100 percent and borrowed capital at 75 percent. Twelve percent of the net additions to capital as so determined may be added to the basic credit.

The Base Period

Taxpayers on a calendar year basis and taxpayers with fiscal years ending after March 31 are required to adopt a base period consisting of the four years beginning on January 1, 1946, and ending on December 31, 1949, prorating when necessary. Taxpayers with fiscal years ending after December 31 but before April 1 will use as their base period the last four con-

secutive taxable years ending prior to April 1, 1950.

Invested and Capital Credit

The law also permits a taxpayer to calculate his credit on the basis of a rate of return on invested capital. The credit of a corporation using this method is the sum of its invested capital credit plus its new capital credit. The rates of return on invested capital allowed in computing the invested capital credit are 12 percent of the first $5 million, 10 percent of the next $5 million, and 8 percent of the invested capital in excess of $10 million.

Equity capital and retained earnings are measured at the full amount of such investments. In the case of borrowed capital, which is defined to include all indebtedness (not including interest) evidenced by a bond, note, bill of exchange, debenture, certificate of indebtedness, mortgage, deed of trust, bank loan agreement, or conditional sales contract, the rates are applied to three-fourths of such investments, and one-fourth of the interest payments are deductible in the current tax year in computing income subject to the excess profits tax.

The taxpayer may determine his equity capital and retained earnings either by an "assets" approach or by a "historical capital" approach. The first method involves the addition to the net assets at the end of the base period of the net deficit, if any, in the period 1946 to 1949, or 1940 to 1949, whichever is the greater, and the deduction from this sum of the liabilities at the end of the base period. Under the "historical capital" approach, which was used in World War II, the equity capital and retained earnings represent the money and property previously paid in for stock or paid in for surplus plus the accumulated earnings and profits of the corporation as of the beginning of its taxable year.

Net Capital Changes in the Tax Years

Taxpayers using either the average earnings credit or the invested capital credit may increase their credit in accordance with their net additions to capital since 1949. Borrowed capital must again be counted at 75 percent of the investment.

When the taxpayer employs the average earnings credit or computes his invested capital credit on the basis of the "assets" approach, the amount of the increase is determined by applying a flat 12 percent rate to the net additions to capital. The taxpayer computing his invested capital credit on the "historical capital" basis is allowed a rate of return of 12 percent, 10 percent, or 8 percent, depending upon his rate bracket, on net capital additions during the tax period.

Excess Profits Net Income

The corporate income to which the credit is to be applied in determining the taxpayer's "excess profits" is an adjusted version of the net income to which the normal corporate tax applies. Chief among the adjustments is an exclusion of capital gains and losses, both long and short term, from the sale or exchange of capital assets. For a full list of the adjustments, taxpayers should consult Section 433 of the Act. Similar but not identical provisions for adjusting the income of the base period years are provided in this section.

General Relief Provisions

The law affords to many corporations whose unusual experiences or changing circumstances during or subsequent to the base period entitle them to special treatment alternative methods of computing the tax. Special formulas designed to reduce the area of administrative discretion necessarily involved in the processing of relief claims under Section 722 of the World War II law are made available to corporations suffering substantial income abnormalities during the base period, introducing new products or services during the base period, substantially increasing their capacity during the base period, commencing business during or subsequent to the base period, qualifying as members of depressed industries during the base period or experiencing an unusually rapid growth during the base period. The nature and application of these relief provisions are briefly summarized below.

Abnormalities during the base period—Two formulas are made available to a corporation whose income during the base period years was substantially abnormal because of a physical interruption to production, such as a fire, strike, or flood, or because of a depression in the business of the taxpayer resulting from temporary economic circumstances such as a severe price war. In general, these formulas are available only if their use would increase the taxpayer's credit by 10 percent or, when the abnormality occurs during a single year, would increase his excess profits net income for that year by 10 percent.

Under these provisions, a taxpayer suffering an abnormality during any one of the 12-month periods in the best three years of the base period may, if he was in business at the beginning of the base period, substitute for his actual excess profits net income during this period an amount determined by multiplying his total assets on the last day of the period by an industry rate of return announced by the Secretary of the Treasury. If an abnormality is present in more than one of the three 12-month periods selected as the taxpayer's best three years, the taxpayer may multiply the average of the amounts of his total assets on the last day of each of his base period years by the base period rate of return for the industry to determine a substitute average base period net income.

Taxpayers having abnormalities in more than one of their best three years may not adjust their substitute average base period net income for changes in capital during the last two years of the base period. Taxpayers employing the first of these two formulas, however, may claim the adjustment for capital additions in both 1948 and 1949, provided the year of the abnormality is 1946 and or 1947, and may claim an adjustment for capital additions in 1949 when the year of the abnormality is 1948.

New products or services—To qualify under this provision, a corporation must have commenced business before the base period and made "substantial" changes in its products or services during the last 36 months of the base period. To be "substantial," the new product line must, by the end of the third year following the year in which the products were introduced, have increased the corporation's gross income in an amount equal to 40 percent of the corporation's gross income or 33 percent of the corporation's net income in that year. In addition, the corporation must be able to show that its net income in any one of the taxable years in which it has met the percentage test was in excess of 125 percent of its average net income during the base period years preceding the introduction of the new product.

The taxpayer who qualifies may use a substitute average base period net income computed by multiplying its total assets for the last day of its last pre-excess profits tax year or of the earliest year in which the taxpayer qualifies for relief, whichever day is later, by the base period rate of return in its industry. If the year in which the taxpayer first meets the aforementioned tests ends after the base period, the substitute average base period net income is computed by multiplying the total assets for the last day of such taxable year by the base period rate of return for the taxpayer's industry classification.

Increase in capacity during the base period—To qualify under this provision, a corporation must have commenced business before the base period and made "substantial" changes in its capacity during the last 36 months of the base period. These "substantial" changes, which must take place prior to the end of the base period, must have either (1) resulted in an increase of 100 percent or more in its production capacity; or (2) resulted in an increase of 50 percent or more in its productive capacity and the adjusted basis of the taxpayer's total facilities after the addition or replacement exceeds by 50 percent or more the adjusted basis of the taxpayer's total facilities prior to such addition

or replacement; or (3) caused the unadjusted basis of the taxpayer's total facilities after such addition or replacement to exceed by 100 percent or more the unadjusted basis of the taxpayer's total facilities prior to such addition or replacement.

A corporation qualifying may elect to use an average base period net income calculated by multiplying the base period rate of return for the corporation's industry classification by its total assets for the last day in its last pre-excess profits tax year.

Depressed industries—To qualify as a member of a depressed industry, the average rate of return for the entire industry to which the corporation belongs on total assets during the years 1946 through 1948 must have been less than 63 percent of the industry's average rate of return over the period 1938 through 1948.

Corporations in depressed industries are permitted to use a substitute average base period net income computed by multiplying their average total assets during the base period by 80 percent of the depressed industry's average rate of return during the period 1938 through 1948.

New corporations—The "new corporation" provisions apply only to corporations which have commenced business at any time after the beginning of the base period. In general, "new corporations" are permitted to employ an alternative average base period net income computed by applying the average base period rate of return for the entire industry to the amount of the taxpayer's total assets.

Growing corporations—To qualify for the growth formula, a corporation must have commenced business before the beginning of the base period and experienced an unusually rapid growth during the base period. Two alternative sets of tests are provided to determine whether the corporation has met the "growth" requirements.

Under the first, a corporation must be able to show that its total payroll for the last half of its base period was 130 percent or more of its total payroll for the first half of its base period, or, alternatively, that its gross receipts during the last half of its base period are 150 percent or more of its gross receipts for the first half of its base period. In either case, the taxpayer's total assets at the beginning of the base period must not be in excess of $20,000,000.

A corporation may also qualify as a "growth" company if it meets all of the following tests: (1) the taxpayer's net sales for the period January 1 through June 30, 1950, when multiplied by 2 are 150 percent or more of its average net sales in the calendar years 1946 and 1947; (2) 40 percent or more of the taxpayer's net sales for the calendar year 1950 are attributable to a product or class of products "not generally available to the general public" prior to January 1, 1946. For this purpose "a product or class of products" includes articles of which the product or class of products is a principal component and articles which are themselves a component of such product or class of products; and (3) the taxpayer's net sales attributable to such product or class of products in the calendar year 1946 are 5 percent or less than such net sales in 1949.

A calendar year corporation which qualifies under either of these tests may compute an alternative average base period net income on the basis of (1) its income in the years 1948 and 1949; (2) its income in the year 1949; or (3) one-half of its income in 1949 and 40 percent of its income in 1950. In addition, corporations qualifying under the second set of eligibility requirements and whose excess profits net income for 1949 was not more than 25 percent of their income for 1948 may compute their alternative average base period net income on the basis of one-half their volume in 1948 and 40 percent of their income in 1950.

Carryovers of Net Operating Losses

The net operating loss carryover or carry-back is not used for computing the excess profits tax net income of the base period years. The law, however, permits a taxpayer, in calculating the net income of an excess profits tax year, to carry back and carry forward a net operating loss in the same manner as is permitted under the normal tax and surtax rules, with the exception that the carry-back is limited to one year and the carry-forward period to 5 years.

Taxpayers other than those using the "asset" approach to an invested capital credit may elect to carry forward to the years 1950 and 1951 the total of the operating losses in the base period reduced by the losses carried back to years prior to the base period and by the income of the base period years.

Carryovers of Unused Excess Profits Credits

The law permits a one-year carry-back and a five-year carry forward of an unused excess profits credit. For a taxable year beginning before July 1, 1950, and ending after June 30, 1950, the unused excess profits credit is the same percentage of such credit, computed as if all of such year were subject to the excess profits tax, which the number of days in the taxable year after June 30, 1950, bears to the total number of days in the year. Any unused portion of the $25,000 minimum credit shall not be counted for purposes of the unused excess profits carryover.

TABLE OF CONTENTS

PAGE

Death

Frank E. Gorrell, founding Secretary 11

Defense

Tin order still awaiting approval .. 13
Order M-4 ban on construction ... 13
ODM staff organization 13
Alan Valentine resigns 13

Personnel

Canners League of Florida 13
Gibbs Co. service awards and promotions 13
H. G. Herrell appointed 13

Foreign Trade

Imports of canned meats 13

Convention

Schedule of principal events of the 1951 Convention 14
Details of raw products conferences at Convention 15
Quartermaster General Feldman to address 1951 Convention 15

PAGE

Foreign Aid

Citrus fruit technology 15

Statistics

RSP cherry stocks 15
Stocks of bulk sauerkraut 15

Publicity

Seventeen 15

Congress

House committee reports new renegotiation bill 16
Support for nonbasic crops 16

Meetings

Forthcoming meetings 16

Meeting of Competition

Supreme Court confirms seller's right to reduce prices in particular transactions in order to meet competition 17

Taxes

Summary of corporate excess profits tax law 18